

IN THE COURT OF MS. NEELOFER ABIDA PERVEEN:
ADDL. SESSIONS JUDGE : (CENTRAL DISTRICT):
TIS HAZARI COURT:DELHI

Crl. Rev. No. 310/2019

Date of institution: 07.05.2019

Decided on: 15.5.2020

In the matter of :

T.T. Ltd.,
Having its registered office at
879, Master Prithvi Nath Marg,
Opp.Ajmal Khan Park,
Karol Bagh, New Delhi-110005
Through its AR
Sh.Manoj Tiwari

....Petitioner / complainant

Versus

Mr. Ashish Srivastava (Prop),
M/s Ashish Garments,
A-50, Madan Park,
Gali NO.1, East Punjabi Bagh,
Near Agrasen Co-Op Society,
New Delhi-110026

.....Respondent / Accused

Neelofar

JUDGMENT

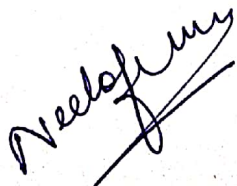
This order disposes of the present revision petition against order dated 08.08.2018 passed in Complaint Case NO.514740/2016 as also the application filed along with the revision petition u/s 5 of the Limitation Act for condonation of delay of 213 days in filing of the revision petition.

2. Ld. Trial Court vide the order impugned has dismissed in default the complaint instituted by the petitioner herein u/s 138 NI Act for non appearance and for non-prosecution. Similar grounds are raised for condonation of delay in filing of the revision impugning the order vide which the criminal complaint is dismissed in default as also for restoration of the criminal complaint to its original status and number after setting aside of the order assailed.

3. Ld. Counsel for petitioner contended that the complainant is a duly incorporated company engaged in the business of manufacture and supply of fabrics and hosiery goods

Nalajee

and that the accused representing himself to be the proprietor of M/S Ashish Garments had approached the complainant company for supply of different types of hosiery items, undergarments on credit basis and that the payment of the goods supplied was agreed to be made through cheques with the assurance that the cheques shall be honoured upon presentation and accordingly, the complainant had supplied goods from time to time as per requirements of the accused which were duly received by the accused and that the statement of account on 31.03.2015 reflects a total outstanding unpaid bills in the amount of Rs.75,117/- and in order to discharge its liability the accused had issued cheque bearing No.000003 dated 21.08.2015 drawn on the Bank of Baroda, Sultanpur Majra, New Delhi for a sum of Rs.75,711/- in favour of the complainant which was presented on the same date by the complainant to its banker State Bank of Hyderabad, Karol Bagh Branch and was returned unpaid vide Bank Return Memo dated 22.08.2015 with the remarks "Funds Insufficient", upon which notice of demand dated 27.08.2015 u/s 138 NI Act was served upon the accused but the accused failed to make the payment despite service of notice upon which Criminal



Complaint No.514740/2016 came to be instituted and the complainant tendered pre-summoning evidence on 03.10.2015. On 17.12.2015, PF filed was returned as unserved. On 05.05.2016, the complainant was directed to file affidavit in respect of last known address of the accused. That the affidavit was prepared but same could not be filed on the next date of hearing i.e. 26.08.2017 and 17.01.2018 as the Ld. Presiding Officer was on leave. On 08.08.2018, Counsel for complainant could not appear in person due to her personal difficulty as her mother-in-law was on the death bed and directed her junior Advocate to appear and take necessary steps. The AR of the complainant could also not appear on the said date as AGM of the complainant company was scheduled for that date. That the main counsel was misinformed that the directions have been issued for the filing of the process fee for service of the accused on the last known address and that the matter had been notified for 10.04.2019 and accordingly, PF was filed vide PF receipt dated 10.09.2018. That on 10.04.2019, when the main Counsel appeared personally before Ld. Court, she was surprised to find out that the matter had already been dismissed in default for non-prosecution upon which the present revision petition was



immediately prepared. That the complaint had been dismissed on 08.08.2018 while the present petition came to be filed on 04.05.2019 I.e. after a delay of 214 days as the main Counsel was under the impression that the matter had been adjourned for 10.04.2019 on 08.08.2018.

4. Record of Complaint Case No.514740 was called for. Record reveals that upon the complaint of the petitioner, summoning order was passed on 03.10.2015 and the complainant was directed to take steps for service of the accused but the process issued for 17.12.2015 was returned unserved. Fresh address was directed to be filed and matter came to be listed for 02.03.2016. Fresh address was not filed on 02.03.2016 and for the same purpose, the matter was adjourned to 05.05.2016. It was submitted on behalf of the complainant on 05.05.2016 that the accused resides at the same address in view whereof the complainant was directed to file affidavit in respect of the address on the record along with supporting material and the matter came to be adjourned for the said purpose to 22.08.2016. Steps were not taken for the adjourned date and matter was put up for further proceedings on 24.11.2016.



Office reported that steps have not been taken and therefore matter came to be adjourned for 11.04.2017. On 11.04.2017, also further opportunity was sought and last opportunity was granted to the complainant to take steps in pursuance to the order dated 05.05.2016. On the adjourned date also, steps were not taken and the matter stood transferred and ordered to be put up for further proceedings on 17.01.2018. Again steps were not taken on 17.01.2018 and matter was ordered to be put up for purpose fixed on 08.08.2018. None appeared for the complainant on 08.08.2018, matter was taken up at 10 a.m, 12 p.m and 2 p.m. In such circumstances as the complainant had not taken the steps directed vide order dated 5.5.2016 and as there was no appearance on behalf of the complainant, the complaint was dismissed in default for non-appearance and for non-prosecution.

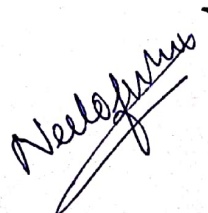
5. It is contended by the Ld. Counsel for the petitioner that the main Counsel because of personal difficulty owing to a family contingency could not appear on 8.8.2018 and had instructed her junior Advocate to put in appearance for the complainant and even the AR of the complainant because of



AGM scheduled for that date was not in a position to appear in person. No application for exemption from personal appearance however was filed and what on the face of the record appears most pertinent and poignant is that despite availing of several opportunities w.e.f. 05.05.2016 itself the complainant could not find it opportune and convenient to furnish affidavit for over two years in compliance of order dated 05.05.2016 to the effect that the address mentioned in the memo of parties is the last known correct address available with the complainant. Even if it were to be accepted that the junior associate had misunderstood or misconstrued the proceedings and had conveyed a wrong impression to the main Counsel that matter had been adjourned for filing of the PF for a date in April and the adjourned date was also noted down in the diary by the main counsel and under such impression, the complainant had also filed PF and taken steps for service of the accused what however has gone unexplained is that under what circumstances the affidavit in terms of order dated 05.05.2016 was not filed and directions not complied with, steps not taken from over 2 years.



6. Record also reveals that case file was inspected on 24.02.2018 when the matter was listed for hearing on 08.08.2018 and still the steps in accordance with the order dated 05.05.2016 were not taken for 08.08.2018. The complainant seeks to invoke the bonafide of the complainant based upon the acceptance of the PF by the office for service of the accused vide PF receipt dated 10.09.2018. However, there is no such corresponding PF proforma available on the court record. Further there is no such affidavit in compliance of the order dated 05.05.2016 filed by the complainant till 8.8.2016. The only lame pretext set up is that the Presiding Officer was on leave however, the record reveals that the complaint was duly taken up on each and every date that the Presiding Officer was on leave by the Ld. Link M.M and infact the presence of the Ld. Counsel for the complainant is recorded before the Ld. Link M.M for all such dates i.e. 20.08.2016, 24.11.2016, of AR with Counsel on 26.08.2017, of Proxy Counsel for the complainant on 17.01.2018. The complainant is duly represented but fails to take the steps and the proceedings linger on at the same stage for over two years for want of steps to be taken at the end of the complainant.



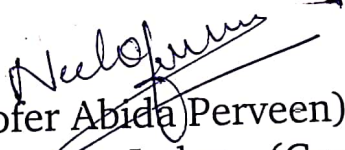
7. Also, the complaint was dismissed in default on 08.08.2018 and the only ground taken is inadvertence on the part of the junior associate and the bonafide belief with senior Counsel that matter now stands adjourned for service of the accused for 10.04.2019. The case status, proceedings for the date and the next date of hearing are all readily available on the CIS Portal. If the complainant was negligent in verifying the status of the proceedings easily accessible online, it is the complainant who is to suffer the consequences. The approach of the complainant in the prosecution of the proceedings has been lackadaisical for over two years as even the affidavit in respect of address for service was not filed. The conduct of the complainant lacks due diligence and has been negligent in not furnishing the affidavit in respect of the address despite passing of over two and half years at the same stage for service of the respondent. Negligence and lack of diligence in prosecuting the complaint is writ large on the record of the complaint case. There is no sufficient cause set up for condonation of delay in filing of the revision petition. No ground is therefore made out to condone the inordinate delay of 213 days which has gone unexplained for want of bonafide sufficient cause at the end of

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the complainant. The application u/s 5 of Limitation Act for condonation of delay is therefore dismissed and as a consequence, the revision petition is dismissed being time barred.

Trial Court Record be returned with Copy of Judgment. File of revision petition be consigned to record room.

**Announced in the open Court
on this 15th day of May 2020**


(Neelofer Abida) Perveen
Addl. Sessions Judge : (Central)
Tis Hazari Courts, Delhi